



# DeKalb County Government

Manuel J. Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030

## Agenda Item

File ID: 2019-3805

Substitute

7/9/2019

Public Hearing: YES  NO

Department: Voter Registration & Elections

**SUBJECT:** Intergovernmental Agreement with the City of Lithonia for election services.

**Commission District(s):** All

**Information Contact:** Erica Hamilton, Director, Voter Registration & Elections

**Phone Number:** 404-298-4040

**PURPOSE:**

To consider approving an intergovernmental agreement between the County and the City of Lithonia for election services.

**NEED/IMPACT:**

This intergovernmental agreement signifies a mutually beneficial, efficient and cooperative working relationship between the two governments.

**FISCAL IMPACT:**

Funding pursuant to intergovernmental agreement.

**RECOMMENDATION:**

To approve this intergovernmental agreement in a final form acceptable to the County Attorney and authorize the Chief Executive Officer to execute all necessary documents.

**INTERGOVERNMENTAL AGREEMENT  
FOR THE PROVISION OF ELECTION SERVICES  
BETWEEN  
DEKALB COUNTY, GEORGIA and  
THE CITY OF LITHONIA, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, between DeKalb County, Georgia (“County”), a political subdivision of the State of Georgia, and the City of Lithonia, Georgia (“City”), a municipal corporation lying wholly or partially within the County.

**WHEREAS**, DeKalb County, Georgia is a constitutionally created political subdivision of the State of Georgia; and

**WHEREAS**, the City of Lithonia is a municipality located in DeKalb County, Georgia; and

**WHEREAS**, the County and the City desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of both jurisdictions; and

**WHEREAS**, both parties are interested in serving the needs of the citizens of the City by the County providing for the services of conducting all elections required and permitted by law; and

**WHEREAS**, the City desires to contract with the County to conduct all municipal elections for the citizens of the City pursuant to the applicable laws of the State of Georgia; and

**WHEREAS**, the City and the County are authorized by Art. IX, Sec. III, Par. I of the Constitution of the State of Georgia to enter into such an agreement for the conduct of the City elections; and

**WHEREAS**, O.C.G.A. § 21-2-45(c) authorizes the governing authority of any municipality to contract with the county within which that municipality wholly or partially lies to conduct any or all elections; and

**WHEREAS**, pursuant to O.C.G.A. § 21-2-45(c), a city may by ordinance authorize a county to conduct such election(s), and the City has adopted such an ordinance; and

**WHEREAS**, the DeKalb County Board of Registrations and Elections (“BRE”) has jurisdiction over the conduct of primaries and elections and the registration of electors in the County; and

**WHEREAS**, the BRE, among other things, is responsible for the selection and appointment of the elections supervisor and the selection, appointment, and training of poll workers in elections;

**NOW THEREFORE**, in consideration of the following mutual obligations, the County and City agree as follows:

**ARTICLE 1  
CONDUCT OF ELECTIONS**

1.1 This Agreement will govern the conduct of any and all elections which the City requests the County to conduct (hereinafter referred to as "City Election(s)"), including any and all runoffs which may be necessary. It is the intent of the parties that City Elections be conducted in compliance with all applicable federal, state and local legal requirements.

1.2 For each City Election, the City, at its sole option, shall submit to County a request in the form attached hereto as Exhibit A. Requests must be made in conformance with O.C.G.A. § 21-2-45 *et seq.* and § 21-2-540 *et seq.*, now and as amended hereafter, to the address specified in the Notice Section below. If a timely request is not made, the County shall have no obligation to conduct the City Election which was the subject of the request.

1.3 In the event any Special City Election becomes necessary, the City and the County shall confer and determine a mutually convenient date as allowed by law to conduct any such election.

**ARTICLE 2  
TERM OF AGREEMENT**

This Agreement shall commence on the date that it is executed by or on behalf of the governing authority of DeKalb County, Georgia, for a period not more than fifty (50) years, unless otherwise terminated as set forth herein.

**ARTICLE 3  
DUTIES AND RESPONSIBILITIES**

Pursuant to this Agreement, each party shall provide the following enumerated services:

3.1 Upon receipt of request to perform a City Election, the BRE and/or the County Election Supervisor, or their designee(s) shall be responsible for:

- a) Designating early and advance voting sites and hours;
- b) Placing the City's candidate(s) on the electronic and printed ballots for City Elections after qualifying;
- c) Placing the City's referendum question(s) on the ballot for a City Election after timely written notice from the City is received by the County (which such notice shall include all necessary details and information);
- d) Hiring, training, supervising and paying poll officers and absentee ballot clerks;

- e) Preparing and submitting to the City Clerk, as required by state law O.C.G.A. § 21-2-224(e), now and as it may be amended hereafter, a list of electors.
- f) Performing duties of election superintendent/supervisor, and absentee ballot clerk for City Elections;
- g) Performing logic and accuracy testing as required by Sections 183-1-12-.02 and .07 of the Official Compilation of Rules and Regulations of the State of Georgia, now and as they may be hereafter amended;
- h) Providing staff, equipment and supplies for conducting City Elections at City polling places on City Election days and for conducting recounts as may be required;
- i) Certifying City Election returns as required by state law O.C.G.A. § 21-2-493, now and as it may be amended hereafter, and submitting certified City Election returns to the Georgia Secretary of State and City Clerk or as otherwise directed;
- j) Upon a change in City precincts or voter districts, notifying City residents of any change in voting districts and/or municipal precincts; and
- k) Preparing and submitting timely requests, as necessary, for Preclearance of voting precinct changes to the Department of Justice, Civil Rights Division under Section V of the Voting Rights Act of 1965.

3.2 The City shall be responsible for:

- a) Adopting Election Resolutions pursuant to O.C.G.A. § 21-2-45(c), now and as it may be amended hereafter, and Calls for Special City Elections (“Special Election Calls”) as required by O.C.G.A. § 21-2-540 *et seq.*, now and as it may be amended hereafter;
- b) Submitting Preclearance requests, as necessary, to the Department of Justice, Civil Rights Division under Section V of the Voting Rights Act of 1965, including, but not limited to the submission of a request to allow for district changes or Calls for Special City Elections;
- c) Preparing qualifying materials for potential candidates and performing qualifying of candidates, including any write-ins, for City Elections as required by state law, specifically O.C.G.A. § 21-2-130 *et seq.*, now and as it may be amended hereafter;
- d) Placing advertisements in the City’s legal organ regarding Calls, as required by state law O.C.G.A. § 21-2-540, now and as it may be amended hereafter;
- e) Fixing and publishing the qualifying fee as required by state law under O.C.G.A. § 21-2-131 *et seq.*, now and as it may be amended hereafter;

- f) Collecting and retaining the qualifying fee as required by state law O.C.G.A. § 21-2-131, now and as it may be amended hereafter;
- g) Performing filing officer duties as required by the Government Transparency and Campaign Finance Commission for any and all state reports filed by the candidates or committees in conjunction with City Elections to ensure compliance with Title 21, Chapter 5 of the Official Code of Georgia;
- h) Verifying, in a timely manner, accuracy of voter list(s) for City residents;
- i) Providing the County with a detailed map showing the City's Municipal Boundaries and Voting District Boundaries;
- j) For all aspects related to the issuance of bonds by the City, except for City referendum election duties specifically requested of the County as provided herein;
- k) Notifying the County immediately of the need for a Special City Election including election races and/or ballot referendum questions;
- l) Providing the County with an electronic copy of referendums that must be placed on a ballot;
- m) Providing the County, via electronic mail or facsimile, affidavits and listing of candidates immediately after close of qualifying;
- n) Reviewing ballot proofs and notifying County of corrections or approval within twenty-four (24) hours of receiving proofs for candidate listings; and
- o) Otherwise cooperating with the County in the performance of this Agreement and providing the County such documentation and information as it may reasonably request to facilitate the performance of its duties under this Agreement.

#### **ARTICLE 4 COMPENSATION AND CONSIDERATION**

Pursuant to this Agreement and O.C.G.A. § 21-2-45(c) now and as it may be amended hereafter, the City shall pay to the County all costs incurred in performing the functions agreed upon herein. City agrees to pay County the actual costs incurred by County in conducting City Elections as stated on the County's invoice. City shall remit said funds to County within thirty (30) days of receipt of invoice.

#### **ARTICLE 5 LEGAL RESPONSIBILITIES**

5.1 The City shall be solely responsible for any liability resulting from any claims, potential claims, or litigation arising from, pertaining to, or in connection with any City Election held pursuant to this Agreement. The City agrees to reimburse the County for all costs, including, but

not limited to, court costs and attorney fees for the County Attorney or outside counsel, incurred by the County as a result of any such claim or litigation in connection with any City Election held pursuant to this Agreement. The City shall make payment of such reimbursements to the County within thirty (30) days of receipt of any invoice for reimbursement from the County.

5.2 In the event that a City Election is contested, the City shall be solely responsible for any liability resulting from any claims or litigation arising from or pertaining to any contested City Election. The City agrees to reimburse the County for all costs incurred in responding to the election challenge, including, but not limited to, attorney's fees for the County Attorney or outside counsel and all expenses associated with the election challenge and any appeals thereafter. The City shall make payment of such reimbursements to the County within thirty (30) days of receipt of any invoice for reimbursement from the County. If a second election is required, such election will constitute a City Election under this Agreement and shall be conducted in accordance with the terms of this Agreement.

5.3 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law.

5.4 Should it be necessary to comply with legal requirements that any of the County's personnel shall be sworn in as a temporary officer or employee of the City, such formality shall be observed without limitation.

## **ARTICLE 6 EMPLOYMENT STATUS**

6.1 All County personnel assigned under this Agreement are and will continue to be employees of the County for all purposes, including, but not limited to: duties and responsibilities, employee benefits, grievance, payroll, pension, promotion, annual or sick leave, standards of performance, training, workers compensation and disciplinary functions.

6.2 All County personnel assigned under this Agreement are and will continue to be part of the DeKalb County Voter Registrations and Elections and under the supervision of the Elections Supervisor.

6.3 All City personnel assigned under this Agreement are and will continue to be employees of the City.

## **ARTICLE 7 RECORDKEEPING AND REPORTING**

7.1 The County Voter Registrations and Elections Department is the central repository for all departmental records and makes available public records as defined and required by the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et seq.*, O.C.G.A. § 21-2-51 and O.C.G.A. § 21-2-72, now and as they may be amended hereafter. During the term of this Agreement, the County will continue to comply with the applicable provisions of the Georgia Open Records Act and the Georgia Election Code.

7.2 Except as limited by any provision of state or federal law, the City may request, review and access data and County records at a mutually agreed upon time to ensure compliance with this Agreement.

**ARTICLE 8  
TERMINATION AND REMEDIES**

Either party may unilaterally terminate this Agreement, in whole or in part, for any reason whatsoever by notice in writing to the other party delivered at least one hundred twenty (120) days prior to the effective date of the termination.

**ARTICLE 9  
NOTICES**

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile notice. Future changes in address shall be effective upon written notice being given by the City to the County Elections Supervisor or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County:                    Director, DeKalb County Registrations and Elections  
   4380 Memorial Drive  
   Suite 300  
   Decatur, Georgia 30032

With a copy to:                    County Attorney  
   1300 Commerce Drive, 5<sup>th</sup> Floor  
   Decatur, Georgia 30030

If to the City:                      City Manager  
   City of Lithonia  
   6980 Main Street  
   Lithonia, Georgia 30058

With a copy to:                    City Attorney  
   City of Lithonia  
   6980 Main Street  
   Lithonia, Georgia 30058

**ARTICLE 10  
NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this Agreement.

**ARTICLE 11  
ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

**ARTICLE 12  
SEVERABILITY, VENUE AND ENFORCEABILITY**

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

**ARTICLE 13  
BINDING EFFECT**

This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

**ARTICLE 14  
COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.



July 8, 2019

**[SIGNATURE PAGES ON FOLLOWING PAGE]**

July 8, 2019

IN WITNESS WHEREOF, the City and County have executed this Agreement through their duly authorized officers on the day and year first above written.

**DEKALB COUNTY, GEORGIA**

**ATTEST:**

\_\_\_\_\_  
(SEAL)  
**MICHAEL L. THURMOND**  
Chief Executive Officer  
DeKalb County, Georgia

\_\_\_\_\_  
**BARBARA H. SANDERS-NORWOOD**  
Clerk of the Chief Executive Officer  
and Board of Commissioners of  
DeKalb County, Georgia

**APPROVED AS TO SUBSTANCE:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**ERICA HAMILTON**  
Director / Supervisor  
DeKalb County Board of Voter  
Registration and Elections

\_\_\_\_\_  
**MARIAN C. ADEIMY**  
Assistant County Attorney

**CITY OF LITHONIA, GEORGIA**

\_\_\_\_\_  
(SEAL)  
**DEBORAH A. JACKSON**  
Mayor

**ATTEST:**

**APPROVED AS TO SUBSTANCE:**

\_\_\_\_\_  
Municipal Clerk

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

As per the Agreement executed on \_\_\_\_\_, THE CITY OF LITHONIA hereby requests that DeKalb County conduct its \_\_\_\_\_ Election on \_\_\_\_\_. The last day to register to vote in this election is \_\_\_\_\_. The absentee poll will be located at 4380 Memorial Drive, Decatur, Georgia, 30032.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Municipal Clerk (SEAL)

The DeKalb County Board of Registrations and Elections agrees to conduct the CITY OF LITHONIA \_\_\_\_\_ Election on \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Elections Supervisor  
DeKalb County Board of  
Registrations and Elections (SEAL)